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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,559	03/24/2004	Vincent K. Jones	021245-001310US	8004
20350 7590 05/29/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER ETTEHADIEH, ASLAN	
			ART UNIT 2611	PAPER NUMBER
			MAIL DATE 05/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/809,559	Applicant(s) JONES ET AL.	
	Examiner Aslan Ettehadieh	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's cancellation of claims 1 – 13 and addition of claims 18 – 32 in the reply filed on 04/26/2007 is acknowledged. Claims 1 – 13 are now cancelled and claims 18 – 32 are added. Office action address claims 14 – 32.

Response to Arguments

2. Applicant's arguments filed 04/26/2007 have been fully considered but they are not persuasive.

3. Applicant's arguments regarding claim 14, *Scheibel does not disclose predetermined modulation and rates*. Applicant states:

"In contrast, the modulations and/or data rates in Scheibel are variable. Scheibel describes transmitting a block of data to a target communication device using a first modulation, receiving an acknowledgement from the device, and changing modulations to a second modulation if the number of data blocks lost while transmitting using the first modulation exceeded a specified threshold. See Scheibel, Fig. 3, reference nos. 302, 304, 310,0 and 312. Therefore, the modulation and/or data rate in Scheibel are variable and are not predetermined using one or more attributes of the first station and the second station prior to transmitting data and/or acknowledgements from the first station to the second station (or vice versa) as recited in claim 14. Accordingly, Applicants submit that claim 14 is not anticipated by Scheibel."

4. Contrary to applicant's assertion, Scheibel disclosing changing the modulations and data rates is still predetermined, the changing of a first modulation and rate to a second modulation and rate is known and thus predetermined.

Claim Objections

5. Claim 24 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 14. When two claims in an application are duplicates or else are so close in

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content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Regarding claim 23, "a non-power constrained device" is indefinite, all devices are limited to being constrained to some sorts of power constraints, i.e. a device can not be not constrained by unlimited power.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 14 – 15, 24 – 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Scheibel et al. (US 6212240).
9. Regarding claims 14 and 24, Scheibel discloses a method of wireless communication between a first station and a second station, the method comprising:

at the first station, transmitting data packets to the second station using a first data modulation and a first data rate, wherein the first modulation and the first data rate are predetermined using one or more attributes of the first station and the second station (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49);

at the first station, transmitting acknowledgement packets to the second station in response to data packets received from the second station, using a first acknowledgement modulation and a first acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49);

at the second station, transmitting data packets to the first station using a second data modulation and a second data rate, wherein the first modulation and the first data rate are predetermined using one or more attributes of the first station and the second station (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49); and

at the second station, transmitting acknowledgement packets to the first station in response to the data packets received from the first station, using a second acknowledgement modulation and a second acknowledgement rate, wherein the first acknowledgement modulation and the first acknowledgement rate are predetermined using one or more attributes of the first station and the second station (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49),

wherein the first data rate is distinct from at least one of the second data rate, the first acknowledgement rate, or the second acknowledgement rate (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49; where elements 101 and 107 of figure 1 have the same functionality and thus one device being at a certain and the other at a lower rate is being interpreted as wherein the first data rate is distinct from at least one of the second data rate).

10. Regarding claim 15, Scheibel further discloses wherein the first data modulation is distinct from at least one of the second data modulation, the first acknowledgement modulation, or the second acknowledgement modulation (abstract, figures 1 – 3, col. 3 lines 42 – 47).

11. Regarding claim 25, Scheibel in view of Keaney discloses all limitations of claim 25 as analyzed in claim 14 above.

12. Regarding claim 26, Scheibel in view of Keaney discloses all limitations of claim 26 as analyzed in claim 14 above, except the fourth modulation, Scheibel discloses that figure 4 can include a fourth (or more) modulation (col. 7 lines 1 – 10).

13. Regarding claims 27 – 28, Scheibel discloses the first wireless protocol and the third wireless communications protocols are different wireless communications protocols (abstract, figures 1 – 3, col. 2 lines 19 – 44, col. 3 lines 42 – 47, col. 4 lines 23 – 49, col. 7 lines 1 – 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 16 – 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheibel et al. (US 6212240) in view of Keaney et al. (US 7062703).

15. Regarding claim 16, Scheibel discloses the first data modulation, the second data modulation, the first acknowledgement modulation, and the second acknowledgement modulation are selected from and different QAM rates and a QPSK rate (col. 3 lines 42 – 47). However, Scheibel does not disclose 802.11b and OFDM.

In the same field of endeavor, however, Keaney discloses the use of 802.11b and OFDM (figures 1, 3, col. 1 lines 12 – 17, col. 3 lines 35 – 43, col. 6 lines 6 – 14, col. 7 lines 66 – col. 8 line 11).

Therefore it would have been obvious to one skilled in the art at the time of invention was made to use 802.11b and OFDM as taught by Keaney in the system of Scheibel to allow for a more diverse system. Also, OFDM is a robust technique for efficiently transmitting data over a channel. The technique uses a plurality of sub-carrier frequencies (sub-carriers) within a channel bandwidth to transmit data. These sub-carriers are arranged for optimal bandwidth efficiency compared to conventional frequency division multiplexing (FDM) which can waste portions of the channel bandwidth in order to separate and isolate the sub-carrier frequency spectra and thereby avoid intercarrier interference (ICI). OFDM allows resolution and recovery of the information that has been modulated onto each sub-carrier. Also, 802.11b provides

high data transfer rate (which provides a higher bandwidth availability) and a frequency jumping technique.

16. Regarding claim 17, Scheibel discloses at least one of the first data modulation, the second data modulation, the first acknowledgement modulation, and the second acknowledgement modulation is an QAM and at least one of the modulations is an QPSK modulation (col. 3 lines 42 – 47). However, Scheibel does not disclose 802.11b and OFDM.

In the same field of endeavor, however, Keaney discloses the use of 802.11b and OFDM (figures 1, 3, col. 1 lines 12 – 17, col. 3 lines 35 – 43, col. 6 lines 6 – 14, col. 7 lines 66 – col. 8 line 11).

Therefore it would have been obvious to one skilled in the art at the time of invention was made to use 802.11b and OFDM as taught by Keaney in the system of Scheibel to allow for a more diverse system. Also, OFDM is a robust technique for efficiently transmitting data over a channel. The technique uses a plurality of sub-carrier frequencies (sub-carriers) within a channel bandwidth to transmit data. These sub-carriers are arranged for optimal bandwidth efficiency compared to conventional frequency division multiplexing (FDM) which can waste portions of the channel bandwidth in order to separate and isolate the sub-carrier frequency spectra and thereby avoid intercarrier interference (ICI). OFDM allows resolution and recovery of the information that has been modulated onto each sub-carrier. Also, 802.11b provides high data transfer rate (which provides a higher bandwidth availability) and a frequency jumping technique.

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17. Regarding claim 18, Scheibel in view of Keaney discloses all limitations of claim 18 as analyzed in claims 14 – 17 above.

18. Regarding claims 19 – 22, Scheibel in view of Keaney discloses different data, ack rates, data modulation, ack modulation as shown above. Scheibel in view of Keaney are not explicit about the first data rate and the first ack rate being different rates selected from the 802.11b rates; the first data modulation and the first acknowledgement modulation are different modulations selected from the 802.11b modulations; the second data rate and the second acknowledgement rate are different rates selected from the OFDM rates; and the second data modulation and the second acknowledgement modulation are different modulations selected from the OFDM modulations.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use have these different rates and modulations of Scheibel and Keaney to be used to have the first data rate and the first ack rate being different rates selected from the 802.11b rates; the first data modulation and the first acknowledgement modulation are different modulations selected from the 802.11b modulations; the second data rate and the second acknowledgement rate are different rates selected from the OFDM rates; and the second data modulation and the second acknowledgement modulation are different modulations selected from the OFDM modulations to provide the advantage of providing a higher bandwidth availability.

19. Regarding claim 23, Scheibel in view of Keaney discloses the first station comprises a power-constrained device with limited transmission power and the second

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station comprises a non-power-constrained device (Scheibel: figure 1; Keaney: figures 1, 3).

20. Claims 29 – 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scheibel et al. (US 6212240).

21. Scheibel discloses a first and second station but does not explicitly state that one station has a weaker transmitter or a more sensitive receiver than the other.

It would have been obvious to one skilled in the art at the time of invention was made to use a weaker transmitter for power consumption and to use a more sensitive receiver to provide variable data rates as Scheibel does in order to have more efficient use of bandwidth.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

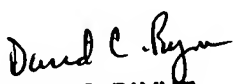
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aslan Ettehadieh whose telephone number is (571) 272-8729. The examiner can normally be reached on Monday - Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Payne can be reached on (571) 272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Aslan Ettehadieh
Examiner
Art Unit 2611

AE


DAVID C. PAYNE
SUPERVISORY PATENT EXAMINER